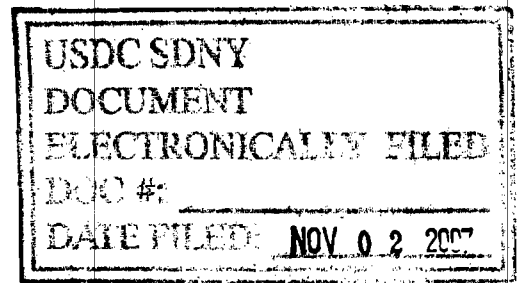


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
ADAM JERNOW, on behalf of himself
and all others similarly situated,

Plaintiffs,

-v-

No. 07 Civ.3971 (LTS)(THK)

WENDY'S INTERNATIONAL, INC.,

Defendant.
-----X

ORDER

WHEREAS, this action was commenced by the filing of a Complaint on May 22, 2007, and an Amended Complaint was filed on June 20, 2007; and

WHEREAS, the Court has reviewed the Amended Complaint to ascertain the basis for assertion of subject matter jurisdiction in this court; and

WHEREAS, such Amended Complaint asserts that the Court has jurisdiction based on diversity of citizenship (28 U.S.C. § 1332(d)), but fails to identify the citizenship of Plaintiff or of any member of the asserted class and fails to identify the citizenship of the Defendant; and

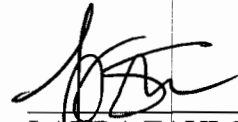
WHEREAS, for purposes of diversity jurisdiction, "a statement of the parties' residence is insufficient to establish their citizenship," Leveraged Leasing Admin. Corp. v. PacificCorp Capital, Inc., 87 F.3d 44, 47 (2d Cir. 1996) (citation omitted); see also Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 373-74 (1978); Reynolds v. Wohl, 332 F. Supp. 2d 653, 656-57 (S.D.N.Y. 2004); and

WHEREAS, for purposes of diversity jurisdiction, "a corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business," 28 U.S.C. section 1332(c)(1); and

WHEREAS, "subject matter jurisdiction is an unwaivable *sine qua non* for the exercise of federal judicial power," E.R. Squibb & Sons v. Accident & Cas. Ins. Co., 160 F.3d 925, 929 (2d Cir. 1998) (citation omitted), and Rule 12(h)(3) of the Federal Rules of Civil Procedure provides that "[w]henver it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action;" it is hereby

ORDERED, that plaintiff shall, no later than 10 days from the date of this Order, file and serve a Supplement to the Amended Complaint containing allegations sufficient to demonstrate a basis for subject matter jurisdiction in this Court or otherwise show cause in writing as to why this case should not be dismissed for lack of subject matter jurisdiction.

Dated: New York, New York
November 2, 2007

A handwritten signature in black ink, appearing to read 'LTS', is written over a horizontal line.

LAURA TAYLOR SWAIN
United States District Judge